

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00034/2016

&

Original Application No.180/00438/2016

Friday, this the 17th day of August, 2018

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member

Hon'ble Mr. Ashish Kalia, Judicial Member

1. O. A. No.180/00034/2016

G. Sajeelv,
S/o. Gopalakrishna Pillai, aged 45 years,
Postman, Paravur, Kollam Postal Division,
Department of Posts, residing at Sajeelv Bhavan,
Vettilathazhom, Decent Junction P.O.,
Mukhathala, Kollam – 691 577.

..... **Applicant**

(By Advocate – Mr. V. Sajithkumar)

V e r s u s

1. Union of India, represented by the Secretary to Government,
Department of Posts, Ministry of Communications,
Government of India, New Delhi – 110 001.

2. The Chief Postmaster General,
Kerala Circle, Trivandurm – 695 033.

3. The Senior Superintendent of Post Offices,
Kollam Postal Division, Kollam – 691 001.

.... **Respondents**

(By Advocate – Mr. P.R. Sreejith, ACGSC)

2. O.A. No. 180/00438/2016 -

M. Muraleedharan Achary,
S/o. Late Madhavan Achary, aged 56 years,
Postman, Thirumullavaram SO, Department of Posts,
residing at Praseethamandiram, Nadukunnil,
Chadayamangalam P.O., Pin – 691 534

..... **Applicant**

(By Advocate – Mr. V. Sajithkumar)

V e r s u s

1. Union of India, represented by the Secretary to Government,
Department of Posts, Ministry of Communications,
Government of India, New Delhi – 110 001.
2. The Chief Postmaster General,
Kerala Circle, Trivandrum – 695 033.
3. The Senior Superintendent of Post Offices,
Kollam Postal Division, Kollam – 691 001. **Respondents**

(By Advocate – Mr. Anil Ravi, ACGSC)

These Original Applications having been heard on 10.08.2018, the Tribunal on the 17.08.2018 day delivered the following:

ORDER

Per : ASHISH KALIA, JUDICIAL MEMBER -

Applicants in both these Original Applications No. 180/0034/2016 and No. 180/00438/2016 are similarly situated and the facts and question of law involved in both these O.A. are identical and hence they were heard together. They are being disposed of by this common order for the sake of brevity by the consent of parties.

2. Both the applicants who are presently working as Postman under the respondent department are aggrieved by the denial of back-wages with effect from the date of entitlement on his placement to the post of postman.

3. Applicant in O. A. No. 180/00034/2016 seeks the following reliefs:

(i) To direct the respondents to release increments and back wages to the applicant by notionally granting service with effect from date of appointment of other candidates in the 2009 select list in the cadre of Postman and to disburse all the consequential benefits as expeditiously as possible.

(ii) Grant such other relief as may be prayed for and as the Court may deem fit to grant, and

(iii) Grant the cost of this Original Application.

4. Applicant in O. A. No.180/00438/2016 seeks the following reliefs:

- (i) To direct the respondents to release increments and back wages to the applicant by notionally granting service with effect from the date of appointment of other candidates in the 2009 select list in the date of Postman and to disburse all the consequential benefits as expeditiously as possible.
- (ii) Grant such other reliefs as may be prayed for and as the Court may deem fit to grant, and
- (iii) Grant the cost of this Original Application.

5. The facts in brief as narrated by the applicants are that applicant in O.A. 180/34/2016 had appeared in the postman examination against 2009 and got qualified whereas applicant in OA 180/438/16 appeared against 2009 to 2012 vacancies and initially got appointed against 2012 vacancy. They were denied appointment though within the merit position due to some irregularities committed by the respondents and vigilance inquiry was conducted revealing the illegality done to the applicants. Applicants were eligible to be accommodated at the 7th candidate in the unreserved category of the year 2009. Since there was undue delay in implementing the findings of the vigilance, Original Applications were filed and common order was passed by the Tribunal in O.A. 118 fo 2012 etc. directing the respondents to take follow up action and pass appropriate orders in accordance with law. It is further submitted by the applicants that the respondents took around three years to implement the order of this Tribunal. The filling up sanction was given by the 2nd respondent on 30.09.2015 and the appointment order was issued by the 3rd respondent accommodating the applicants notionally with effect from 11.11.2010 in O.A.No. 180/438/16 and in the case of

applicant in O.A. 180/34/2016 notionally with effect from the date of joining of his immediate junior. It is submitted by them that they were not granted any notional fixation of pay or arrears of pay so far. Their salary bill show that they were granted only minimum of the basic pay and it is submitted that there is no justification for denying the notional fixation of the pay and arrears of the back-wages. Feeling aggrieved by this, the applicants approached before this Tribunal for redressal of their grievance.

6. Notices were issued and respondents put their appearances and filed detailed written statement contesting the claim of the applicants.

7. It is submitted on behalf of the respondents that applicant Muraleedharan Achary in O.A. 438/2016 was initially engaged as Gramin Dak Sevak MailPacker (GDSMP) Chadayamangalam with effect from 01.03.1999. The applicant appeared for the Limited Departmental Competitive Examination (LDCE) to the cadre of Postman/Mail Guard for the vacancies of 2010 held on 29.08.2010. As the applicant had secured only 116 marks as against the highest mark of 117.5 marks in the OBC category, he was not appointed in 2010. The applicant then appeared in the LDCE to the cadre of postman/mail guard for the vacancies of 2012 held on 19.05.2013 and was selected for appointment to the cadre of postman based on his merit. The applicant was appointed as postman with effect from 06.06.2013. Due to certain complain regarding the irregularities pertaining to the appointments to the cadre of postman in Kollam Division, a vigilance enquiry was ordered by the competent authority. The enquiry unearthed irregularities in the appointment to the cadre of postman for the vacancies of 2008 and 2009 which resulted in recasting of select list of 2008 and 2009. As per the revised select list three back log vacancies of 2009 were

transferred to 2010 taking the communal break up of vacancies of 2020 to UR 4 OBC 4. The competent authority examined all the cases and it was decided to grant appointment to the applicant against the postman vacancy of 2010 under OBC quota notionally with effect from 11.11.2010. There upon the applicant submitted representation seeking back-wages and notional fixation of pay with effect from the date of notional appointment.

8. The applicant filed rejoinder and reiterated his claim of back-wages and notional pay fixation.

9. In the additional reply filed in O.A. 180/438/2016 it is submitted by the respondents that though there was an inadvertent mistake in the preparation of select list 2009, the delay in appointing the applicant to the post of postman has been duly compensated by the respondents by ordering notional appointment with effect from 11.11.2010, I.e the date on which the 1st OBC candidate of 2010 vacancy was appointed. As the applicant was given notional promotion with effect from 11.11.2010, he is eligible to draw subsequent increments from 06.6.2013 onwards. As the applicant had assumed charge as postman with effect from 06.06.2013, by applying the principle of 'no work no pay' he becomes eligible for the actual monetary benefits only from the date of appointment as postman. The applicant was working as GDSMP till the date of his appointment as postman (06.06.2013) and had been paid the entitled TRCA for the work done by him in his capacity as GDSMP. According to the respondents any back-wages for that period would result in granting undue and unintended benefits to the applicant.

10. Therefore, the respondents prayed for dismissal of the O.A.

11. In O.A. 180/34/2016 the respondents submitted that the applicant was engaged as Gramin Dak Sevak Mail Deliverer (GDSMD) Thirppilazhikam on 20.4.2003. The applicant had appeared for the departmental examination for filling up Postman vacancies of Kollam Division and he had secured the required minimum marks in all papers but he was not selected on the basis of his merit position. Further due to a complaint alleging irregularities in Postmen recruitment for the above period, the respondents had conducted a vigilance enquiry which revealed certain irregularities in the selection procedure and it was ordered to terminate the irregular appointment of some candidates inadvertently selected as postmen and to revert such candidates as GDS.

12. Aggrieved by the irregular selection process for the post of postman from the GDS filed OA 408/2012 before this Tribunal. The OA was allowed and respondents were directed to consider the applicant's position in the merit list for appointment to the post of postman and pass appropriate orders in accordance with law. However, the applicant could be accommodated against 2009 vacancy only if the select list of 2009 was recast by eliminating two officials who were omitted to be selected in 2008. This could not be done immediately due to the interim order of this Tribunal in OA 755/2012 and 15/2013 filed against the termination of the services of the applicants therein. The Tribunal had disposed of the above two OAs vide common order dated 04.08.2015 with directions to consider continuation of the applicants there in by creation of supernumerary posts.

13. The case of the applicant has been examined by the respondents in detail and it is found that the pay of the applicant has been fixed at the

minimum of the postman scale w.e.f. 10.10.2015. Though the applicant has been appointed notionally w.e.f. 25.2.2010, the notional increment has not been taken into account. The Circle Internal Financial Adviser has advised that as the applicant was given notional promotion w.e.f 25.02.2010, he is eligible to draw subsequent increments from 25.02.2010 only on notional basis with actual monetary benefits from 11.10.2015 onwards. The respondents therefore, submitted that the applicant is entitled for calculation of notional service for the purpose of drawal of annual increments subject to the terms and conditions in this regard with effect from 25.02.2010 with actual monetary benefits from 11.10.2015 onwards. As the applicant had assumed the charge as postman w.e.f 11.10.2015, by applying the principle of 'no work, no pay, he becomes eligible for the actual monetary benefits only from the date of appointment as postman.

14. We have heard the learned counsel for the parties extensively and perused the pleadings and considered the rival submissions.

15. Learned counsel for the applicants Shri Sajith Kumar drawn our attention to the order of this Tribunal (at Annexure A8 of O.A. 180/00034/2016) in the case of *Smt. A Divya, vs. UOI in O.A. 180/00928/2015* dated 24.05.2016 in which it was held as under:

“5. We, therefore, direct the respondents to consider the applicant for appointment as Postman against the 2nd OBC vacancy of the year 2012 with effect from the date of entitlement and grant her appointment with effect from such date. This appointment is granted notionally without any back wages. “

16. We have considered the above order. The applicant is similarly situated person with OA 3343/2016 claiming the similar relief. We see no reason not extend the benefit of the decision of above said O.A. Because

applicants are not at fault of delay of appointment by the respondents. that the present applicants in both the O.As. succeed to the extent that they are entitled for notional seniority from the date of appointment to grant notional increments from the date of joining of the notional fixation of pay accordingly without any back-wages.

17. The Original applications are allowed partly on the above terms. Respondents are directed to complete the above exercise within three months from the date of receipt of a copy of this order. No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

sj*/

O. A. No. 180/00034/2016

List of Annexures of the applicant

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| Annexure A-1 | - | A true copy of the vigilance report dated 01/05/2012 issued by the 2 nd respondent. |
| Annexure A-2 | - | A true copy of the Judgment dated 11/12/2012 in OA 408/2012 of the Central Administrative Tribunal, Ernakulam. |
| Annexure A-3 | - | A true copy of the Appointment Order No. BB/27/2015 dated 01/10/2015 issued by the 3 rd respondent. |
| Annexure A-4 | - | A true copy of the Memo No. BB/27/2015 dated 09/10/2015 issued by the 3 rd respondent. |
| Annexure A-5 | - | A true copy of the salary bill for the month of November 2015. |
| Annexure A-6 | - | A true copy of letter under RTI Act dated 05/11/2015. |
| Annexure A-7 | - | A true copy of the representation dated 03/10/2015 submitted by the Applicant before the 3 rd respondent. |
| Annexure A-8 | - | A true copy of the Order dated 24/05/2016 in OA 928/2015 of the Central Administrative Tribunal. |

List of Annexures of the Respondents

Nil

O. A. No. 180/00438/2016

List of Annexures of the applicant

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|--------------|---|--|
| Annexure A-1 | - | A true copy of the Memo No. BB/27/exam/2012 dated 05/05/2013 issued by the 3 rd respondent. |
| Annexure A-2 | - | A true copy of the vigilance report dated 01/05/2012 issued by the 2 nd respondent. |

- Annexure A-3 - A true copy of the Judgment dated 11/12/2012 in OA 408/2012 of the Central Administrative Tribunal, Ernakulam.
- Annexure A-4 - A true copy of the Memo No. BB/27/2015 dated 04/11/2015 issued by the 3rd respondent.
- Annexure A-5 - A true copy of the salary bill for the month of April 2016.
- Annexure A-6 - A true copy of the Representation dated 07/01/2016 submitted by the Applicant before the 3rd respondent.

List of Annexures of the Respondents

Nil
